HARVARD
LAW REVIEW.

VOL. VI. APRIL 15, 1892. NO. 1.

GLANVILL REVISED.

WHEN I was editing for the Selden Society some precedents for proceedings in manorial courts I had occasion to remark that one of the manuscripts that I had been using — it lies in the library of our English Cambridge, and is there known as Mm. I. 27 — contained "a revised, expanded, and modernized edition" of Glanvill's treatise on the laws of England.[1] This remark brought to me from the American Cambridge a very kind note suggesting that more should be said of this revised Glanvill, and the editors of the HARVARD LAW REVIEW have been good enough to permit me to say a few words about it in these pages. I hope that the circulation of their excellent magazine will not suffer thereby.

Almost the whole of the manuscript book in question seems to me to have been written by one man, though at many different times. It opens with a table of contents. Upon this follows a Registrum Brevium which I should ascribe to Edward I.'s reign (1272–1307), and not to the latest years of that reign. Then at the beginning of a new quire begins the revised Glanvill. This, as I shall remark below, gradually degenerates into a mere series of writs. Then we reach "Explicit summa que vocatur Glaunvile." A few more writs follow, with some notes and the articles of the eyre. Then the correspondence which took place between Henry III. and de Montfort on the eve of the battle of Lewes; then a short account of that battle (14 May, 1264). Then the

[1] The Court Baron, Selden Soc., p. 6.

king's writ to the mayor and bailiffs of York announcing that peace had been made. Then the following: "And in order that you may know of the events of the battle fought at Evesham between Worcester and Oxford on Tuesday the nones of August in the 49th year of King Henry, son of King John, between the lord Edward son of the King of England and the lord Gilbert of Clare Earl of Gloucester, and Simon of Montfort and his followers, who was slain on the same day, as was his son Henry and Hugh Despenser. [Here we come to the end of a line and a full stop. Then we have the following at the beginning of the next line:] In the 49th year of King Henry, son of King John, and the year of Our Lord 1265, at Whitsuntide, the following page (*subsequens pagina*) was written in the chapel of S. Edward at Westminster and extracted from the chronicles by the hand of Robert Carpenter of Hareslade, and he wrote this." The date is then given by reference to various events, ranging from the creation of the world downwards. It is the year of grace 1265; it is the 33d year since King Henry's first voyage to Gascony; since his second voyage it is twelve years plus the interval between the 1st of August and Whitsuntide; it is twenty years from the beginning of the king's new work at Westminster, and one year since the battle of Lewes. Thus we are brought to the foot of a page. At the top of the next page (and the structure of the book seems to show that nothing has here been lost) we find a precedent for a will, which is followed by a few legal notes written in French, and these bring us to the well-marked end of one section of the book.

The statement about Robert Carpenter, minutely accurate though it is meant to be, is none the less a very puzzling one. In the first place, "he wrote this," (*hic hoc scripsit*) is not free from ambiguity. Did he trace the very characters that we now see, or was he merely the author, the composer or compiler of the text that we now read? And then, whatever "wrote" may mean, what was it that he wrote? At Whitsuntide in the year 1265, at Whitsuntide in the 49th year of Henry III., he cannot have written anything about the battle of Evesham, for that battle was still in the future. We are told that he wrote "the following page," but the following page contains a precedent for a will, and contains nothing that could have been "extracted" from any "chronicles." I have not solved the difficulty.

Was the man who wrote this manuscript the man who revised

and tampered with Glanvill's text? This also is a question that I cannot answer. On the one hand, what he gives us is not always free from mistakes of that stupid kind which we should naturally attribute rather to a paid copyist than to a man who was putting thought into his work. On the other hand, both in the Glanvill and in the other matters contained in this volume there are frequent allusions to one particular part of England, namely, the Isle of Wight and the neighborhood of Southampton and Portsmouth. Thus in Glanvill's famous passage about the privileged towns, which describes how by becoming a citizen of one of them a villain will become free, — a passage to which Dr. Gross has lately invited our careful attention,[1] — the name of Southampton has been introduced; and when the writer wants an example of a writ addressed to a feudal court, he supposes the court to be that held by the guardian of the heir of Baldwin de Redvers, Earl of Devon and lord of the Isle of Wight. Allusions to Baldwin and his family (the family de L'Isle, de Insula, that is, of the Isle of Wight) are not uncommon. But this question, whether Carpenter was the man who revised Glanvill's text, or whether he merely copied a text which had already been revised by some one else, is a question which we cannot answer until all the MSS. which profess to give Glanvill's treatise have been examined. In the mean time I will indulge in no speculations, but will simply describe what is found in the Cambridge manuscript.

A few words about the date of this revised version may however be premised. As it stands it cannot have been written before 1215, for it alludes to Magna Charta; before 1236, for it alludes to the Statute of Merton; before 1237, for it alludes to the Statute or ordinance of that year which fixed a period of limitation for divers writs.[2] Further, it alludes to the minority of Baldwin de L'Isle. This allusion may be ambiguous, for unless I have erred, there were two periods in Henry III.'s reign during which a Baldwin heir to the Earldom of Devon was an infant in ward to the king. The first of these occurred at the beginning of the reign.[3] The second opened in 1245, and must have endured until 1256 or thereabouts.[4] But our "Glanvill" also alludes to Isabella,

[1] Gross, Gild Merchant, i. 102.

[2] Harvard Law Review, iii. 102.

[3] Annales Monastici, i. 113; Courthope, Historic Peerage, 158.

[4] Annales Monastici, i. 99, ii. 99; Excerpts from the Fine Rolls, i. 431.

Countess of Devon; and this seems to bring down its date to 1262, for in that year the last of these Baldwins died, and the inheritance passed to Isabella, who had married William de Forz, Count of Aumâle.[1] Then at the very end of the work we find a writ in which King Henry calls himself Duke of Aquitaine, but does not call himself Duke of Normandy or Count of Anjou. This writ must have been issued between Henry's resignation of the Norman duchy in 1259 and his death in 1272. Also it is a writ founded either upon one of the Provisions of Westminster (1259) or upon a clause in the Statute of Marlborough (1267) which re-enacted that provision; I think that it is founded upon the former. On the other hand, unless this be a trace of the Statute of Marlborough, I see no other trace of that comprehensive Statute. I see no mention of Edward I., and no allusion to any of the many Statutes of his reign. Almost immediately after the end of the Glanvill there come — and there is no transition from one quire to another — articles for an eyre of the 40th year of Henry III. (1265-6), and then we have the passage which tells of Lewes and Evesham, and of what Robert Carpenter did in 1265. On the whole, I am inclined to suppose that the Glanvill was written within a short space on one side or the other of 1265, though it contains more writs of trespass than I should have expected to find at that date.[2] The man who wrote it — I mean the scribe from whose pen we get this manuscript of Glanvill — must have lived on into Edward I.'s reign. As already said, he copied a Register of that reign, and he copied various Statutes. I think that he copied the Circumspecte Agatis, which is ascribed to 1285. The Second Statute of Westminster (1285) is in the book, but was written by another hand.

If the revised Glanvill belongs, and I think that in its present shape it does belong, to the last years of Henry III., then it is somewhat younger than Bracton's work, and we may be not a little surprised that at so late a time some one attempted to refurbish the old text-book and bring it "up to date;" for in the interval there had been great changes in the law, and many new actions had been invented. We cannot say that success crowned the endeavor. The reviser seems to have started upon his task with the intention of explaining difficulties, correcting statements

[1] Annales Monastici, i. 499; Calendarium Genealogicum, i. 106.

[2] Harvard Law Review, iii. 177.

which had become antiquated, and inserting new writs and new rules at appropriate places. But ultimately he discovered that the work was beyond his powers, or perhaps he grew weary of it. He divides his text into "treatises" (*tractatus*). The following scheme will show how his "treatises" correspond to the "books" and "chapters," which we see in the printed volumes:—

1. Tractatus de baroniis et placito terre = lib. i., ii., iii.
2. Tractatus de aduocationibus ecclesiarum = lib. iv.
3. Tractatus de questione status = lib. v.
4. Tractatus de dotibus mulierum, unde ipse mulieres nichil perceperunt et cum partem aliquam perceperunt = lib. vi., vii.
5. Tractatus de querela et fine facto in curia domini Regis et non observato = lib. viii.
6. Tractatus de homagiis faciendis et releuiis recipiendis = lib. ix. cap. 1–10.
7. Tractatus de purpresturis = lib. ix. cap. 11–14.
8. Tractatus de debitis laycorum que solummodo super proprietate rei prodita erunt = lib. x. cap. 1–13.
9. Tractatus de placitis que super possessionibus loquuntur = lib. x. cap. 14–18.

At the end of what is the tenth book of our printed Glanvill, he begins a new, a tenth "treatise," "De placitis que per recognitiones terminantur," and he follows Glanvill down to a point which is in the middle of the third chapter of the eleventh book of our *textus receptus*. He has still to deal with part of the eleventh book, and then with the three remaining books. For a moment we think that he is going to follow Glanvill in his treatment of the possessory assizes. These possessory assizes are the subject-matter of Glanvill's thirteenth book. But from this point onwards the work degenerates into a mere Register of Writs, though among the writs a few explanatory notes will now and again be found. The compiler deals first with the possessory assizes, but then gives us writs of all sorts and kinds, many of which have been already dealt with in the previous "treatises." I hear him saying to himself, "After all, it is a hopeless job, this attempt to edit the old text-book. Glanvill, or whoever its author may have been, was a great man in his day, but his day is over, and we cannot bring it back. Let us at all events have a really useful list of those writs which are current in our own time." This, however, does not prevent him from writing at the end of his register, "Here endeth the Summa which is called Glanvill."

I shall best be able to convey an idea of his work by giving the most remarkable passages which he adds to our *textus receptus* of Glanvill, and some of those passages in which he qualifies or corrects that text. But he is always qualifying or correcting it about little matters. For example, he glosses some very simple words; thus, "proceres, id est, barones," "equidem, id est, certe," "natiuitate, id est, nauitate." This last gloss shows that he is more familiar with French than with Latin. We see the growth of a technical language when Glanvill's essoin "de infirmitate reseantise," becomes "de malo lecti," and even "mall de lith," which is to be contrasted with "mall de venue." And so he corrects his author by writing "defendens, id est, tenens." Then by a marginal note he sometimes stigmatizes a passage as "Lex Antiqua," or "Jus Antiquum," and is fond of speaking of what is done "moderno tempore." Sometimes he marks the interpolations by the word "Addicio," or the word "Extra;" but he is not very careful in this matter. He (I am speaking as though the scribe of our MS. was also the man who made the changes in Glanvill's text) was not much of a Latinist, and I doubt whether he was a great lawyer. At any rate, he succeeds in obscuring some matters which are clear enough in our printed book.

I hope that the passages printed below will speak for themselves to any reader who has the *textus receptus* at hand. A collection of variants cannot be lively reading, but it still may be a useful thing. I have only noticed the considerable changes, for, as already said, the reviser is constantly making minor alterations, some of which are called for by the evolution of the various courts, while others seem almost gratuitous substitutions of a modern word for one which is going out of fashion. For three passages I will ask attention. The reviser says twice over that the recognitors of the grand assize are not to use in their oath a certain word which is used by other jurors. That word he seems to write as *amuncient.* This I take to be *a mun cient* or *a mun scient,* and to mean *to the best of my knowledge.* Before now in these pages I have drawn attention to a similar remark in a Registrum Brevium, — the phrase there I took to be *a son scient.*[1] In the grand assize you must swear positively that A or that B has the greater right. You must not talk about the best of your knowledge or anything of the kind.

[1] Harvard Law Review, iii. 111.

In a curious passage about divorce, our writer speaks of divorce for blasphemy, and refers to the opinion of one whom he calls *aug' mag'*. The reference is, I believe, to a passage from Augustine (Augustinus Magnus) which is contained in the Decretum Gratiani. The canonists held "quod contumelia Creatoris soluit ius matrimonii."[1] Lastly, we have a remarkable statement to the effect that of old the goods of bastards who died intestate belonged to their lords, but that nowadays they belong to our lord the king by the grant of our lord the pope. But without further preface I must produce my collection of variants.

F. W. MAITLAND.

CAMBRIDGE, ENGLAND,
Nov., 1891.

INCIPIT TRACTATUS DE CONSTITUCIONIBUS LEGUM AC IURIUM REGNI ANGLIE TEMPORE SECUNDI HENRICI REGIS.

i. 5. Cum quis conqueritur domino Regi vel eius iustic[iariis] vel cancellariis[2] super iniusta detencione de aliquo libero tenemento si fuerit loquela talis . . . . .

i. 7. quindecim dierum ad minus, ut liber homo habebit respectum quindecim dierum et baro tres ebdomadas et comes unum mensem.[3]

i. 8. At the end comes the following passage which is noted in the margin as an "Addicio" — Item moderno tempore[4] si quis summonitus fuerit ad respondendum de terra et implacitatus fuerit per breve de recto vel de ingressu vel per breve quod dicitur "precipe," et placitum illud fuerit coram iusticiariis, et primo die summonitus non venerit, capietur terra in manu domini Regis, et ad comitatum si placitum fuerit et primo die non venerit, ponetur per vadium et plegios ad respondendum de defalta et capitali placito ad secundum comitatum si placitetur de recto, et si ad secundum comitatum non venerit ipse qui implacitatur, capietur terra in manu domini Regis, et si per quindecim dies non replegiata ipsa terra in manu domini Regis fuerit, perdet tenens seisi-

[1] c. 7, X. 4. 19; see the passage from Augustine in C. 28, qu. 1.

[2] Here and elsewhere a notice of the Chancery as the place where writs are obtained is interpolated.

[3] I do not remember to have seen this rule elsewhere.

[4] The procedure seems to have been made a little less dilatory than it was.

nam. Et replegiari debet tenementum illud de illo per quem in manu domini Regis capta fuerit ut de iusticiariis vel comitatu per breue domini Regis illis directo. Et sciendum quod postquam tenementum aliquod captum fuerit in manu domini Regis non potest tenens se essoniare nec defaltam facere nisi perdat tenementum illud per defaltam.

i. 12. . . . . vel plegios inueniet, scilicet, secundum antiquum statutum aut fidem dabit.[1]

i. 13. . . . . iusticiariis nostris de banco[2]. . .

i. 18. This is preceded by a classification of essoins in a tabular form and the following remark — Nulla mulier debet in aliquo placito essoniari de seruicio domini Regis, quia non possunt nec debent nec solent esse in seruicio domini Regis in exercitu nec in aliis seruiciis regalibus.

i. 30. Omit — Huiusmodi enim publicus actus . . . . . primus dies similiter adiudicabitur utilis.

i. 31. . . . . et in nouis disseisinis, de ultima presentacione et in aliis consimilibus[3]. . . .

corpus enim capietur vel attachietur de consilio iusticiariorum ut festinancius puniatur ille absens rettatus de pace domini Regis infrincta propter curie contemptum.

i. 32. In the margin over against the last sentences describing the imprisonment of a defaulting appellor stands — Jus antiquum.

ii. 3. The count is more elaborate: the demandant traces his pedigree step by step. The word "defendens" is glossed by "tenens." The fine for recreancy is 40, not 60 shillings — this, I think, is a mistake. The punishment imminebit super campionem victum vel super dominum suum si eum sursum caperet. This I understand to mean that the punishment for recreancy falls on the champion himself unless his hirer raises him from the field. By coming to the aid of the craven whom one has hired one exposes oneself to the recreancy fine.

ii. 7. In the famous description of the institution of the grand assize read regalis ista constitucio instead of legalis ista institucio: — an interesting variant.

Add at the end of this chapter — Et statim accedat tenens in

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[1] It is enough nowadays that the essoiner should pledge his faith without finding a more material pledge.

[2] Here and elsewhere notices of "the Bench" are interpolated.

[3] Actions are being classified for the purpose of rules about essoins.

propria persona sua quia non habebit respectum nisi xv. dies, et data fide quod sit tenens et quod in magnam assisam se posuerit, et habebit hoc breue sequens.

ii. 9. Prohibe custodibus terre et heredis Baldewini de Riueris Comitis Deuonie . . .

The writs of peace are treated at greater length. The chapter ends thus — Debent autem huiusmodi breuia irrotulari. Nullus vero tenens debet habere hec duo breuia "de pace de libero tenemento" et "de seruicio" per interpositam personam, hoc est per aliam personam quam per propriam, nisi sit de gracia, vel quia languidus, vel remotissimus et pauper.[1]

ii. 11. Add at end — Notandum est quod in magna assisa non ponantur nisi milites et precipue [*corr.* precise?] iurare debent quod verum dicent, non addito verbo illo quod in aliis recognicionibus dicitur amuncient [*i. e.* a mun scient].

ii. 17. . . . veritatem tacebunt, non addito hoc verbo quod in aliis recognicionibus adicitur, scilicet, amuncient. Ad scientiam autem . . . .

ii. 19. ordinata *not* ordinaria.[2]

iv. 4. After the writ of right of advowson comes — Aliud breue fere simile quod dicitur Quare impedit.[3] Then follows a writ De ultima presentacione. Then cap. 5.

iv. 9. The bishop is to distrain the clerk — et si episcopus hoc facere noluerit per iudicium curie debet dissaisiari de baronia sua et baronia ipsa tenebitur in manu domini Regis.[4] Tandem . .

. . . . eo ipso ecclesiam amittet? Solucio: — Equidem non amittet ut inferius monstrabitur. Sin autem . . . .

iv. 11. . . . remanebit assisa? Et non videtur quod ideo remanere debeat quia cum ille seisinam ipsius presentacionis aliquando habuerit eo quod ultimam presentacionem pater eius habuit, ergo quod recte petere possit seisinam patris eius non obstante aliquo quod factum sit de iure ipso presentandi. Si vero iterum . . . .

iv. 13. Rex Priori de C. iudici a domino Papa delegato . . . . .

v. 1. Marginal note — Ad breue de natiuis sic potest obuiari,

[1] If you put yourself on the grand assize, you must go in person for your writ of peace.

[2] This is a better reading of the original text.

[3] The *Quare impedit* is not one of the oldest actions.

[4] The bishops bitterly complained of this procedure, which made their baronies a security for the appearance of the clergy.

quod si ille qui ad vilenagium trahitur fugerit de terra domini sui ante ultimum reditum domini Johannis Regis de Hibernia in Angliam a clamore domini petentis petitus liberatur quia breue non valet.[1]

. . . . breue de natiuis vicecomiti directum. On this follows a writ de natiuo habendo.[2]

v. 2. Est autem breue tale quod dicitur breue de pace. [*Interlined* — uno modo antiquum breue formatum.] After this writ another — Aliud breue fere simile precedenti de eodem formatum: — the second writ ends with — et dic prefato H. militi quod tunc sit ibi loquelam suam prosecuturus versus predictum R. si voluerit, There is a small difference in form between the new writ and the old.

v. 5. Item si quis natiuus quiete sine aliqua reclamacione domini sui per unum annum et diem in aliqua villa priuilegiata ut in Suthamptona ut in dominico domini Regis manserit, ita quod in eorum comunam, scilicet, gildam tanquam ciuis receptus fuerit, eo ipso a vilenagio liberabitur.

v. 6. Idem est si ex patre libero et matre natiua nisi fuerit patri libero desponsata.

Over the last sentence relating to the partition of the children — Jus antiquum.[3]

Marginal note — Natiuus potest tenere terram liberam habendo respectum erga diuersos dominos et non e contrario quod terra libera de natiuo teneatur.[4]

vi. 4. The paragraphs about the actions of dower are recast. The action for dower unde nihil habet is more rapid than that by writ of right. Therefore the widow should not accept any part of her dower unless she can get the whole, so that she may be able to say "nihil habet."

vi. 10. At the end — Si quis heres infra etatem mulierem desponsat et eam dotat de omnibus terris et tenementis de quibus heres est, et de omnibus que acquirere potest, mortuo herede ipso infra etatem et antequam seisinam terre sue habuerit, poterit ipsa mulier dotem perquirere per legem terre per hoc breue "unde nichil habet," eo quod dominus heredis cepit homagium heredis

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[1] This limitation was introduced in 1237; Bracton's Note Book, pl. 1237.

[2] Glanvill had apparently omitted to give the words of the writ.

[3] It is no longer usual to divide the children between the two lords.

[4] Free land may be held *by* a villain, but cannot be held *of* a villain.

infra etatem existentis, et eo quod si implacitaretur de terra heredis infra etatem existentis vocetur ad warantum ipsum heredem [*sic*].

vi. 17. The following passage is marked "Extra" in the margin — Unde si aliquis liber homo qui tenebat de marito dicte mulieris sine aliquo herede obierit, et ipse liber homo ipsi mulieri in dotem assignatus fuerit, ipsa mulier de terra que fuit dicti liberi hominis sine aliquo iuris impedimento liberam habebit disposicionem ad ipsam cuicunque voluerit dandam inperpetuum, saluo seruicio heredis quod ipse liber homo facere consueuit pro dicta terra marito dicte mulieris et eius antecessoribus.

vi. 17. . . . . non remanebit assignacio dotis ipsius mulieris. Respondet autem qui infra etatem est de dote, de ultima presentacione, et de nova disseisina et de fide, si tamen infra etatem feofatus fuerit, respondet infra etatem si implacitetur.

vi. 17. . . . Sciendum autem quod si in vita alicuius mulieris fuerit ab eo uxor eius separata per parentelam vel ob aliquam corporis sui (id est, uxoris) turpitudinem, scilicet, propter fornicacionem et propter blasfemiam ut dicit aug' mag' [Augustinus Magnus?] nullam vocem clamandi dotem habere poterit ipsa mulier, et tamen liberi possunt esse eius heredes et de iure regni patri suo vel matri si hereditatem habuerit succedunt iure hereditario. Set si uxor ipsa fuerit separata ab ipso viro eo quod contraxit matrimonium ante cum aliqua alia muliere per verba de presenti dicendo "Accipio te in uxorem," "Et ego te in virum," tunc eius pueri non possunt esse legitimi nec de iure regni patri suo vel matri succedunt iure hereditario. Notandum itaque quod cum quis filius et heres . . . . .

vi. 18. Omit from Si vero mulier aliqua plus . . . . to the end of the book.

vii. 1. The passage Si autem plures habuerit filios mulieratos . . . . is marked as Jus antiquum.

vii. 1. The passage Similis vero dubitatio contingit cum quis fratri suo postnato . . . . is marked as Lex antiqua.

vii. 1. . . . . consequuturus esset de eadem hereditate. [Extra] Si quis habeat duos filios et primogenitus filius fecerit feloniam et captus et imprisonatus et pater suus obierit, postnatus frater eius nunquam terram ipsius patris optinebit nisi primogenitus frater obierit ante patrem. Veruntamen . . . .

vii. 3. Item maritus primogenite filie, scilicet, cum habuerit

heredem et non ante, homagium faciet capitali domino de toto feodo pro omnibus aliis sororibus suis. Tenentur autem postnate filie . . . .

. . . . secundum ius regni, homagium tamen secundum quosdam tenentur mariti postnatarum filiarum facere heredi primogenite filie set non marito suo ut dictum est et etiam racionabile seruicium. Preterea sciendum est . . . .

. . . . nisi in vita sua. [Extra] Set si maritus ipse in uxore sua hereditatem habens [*sic*] puerum genuerit, ita quod viuus natus fuerit, post decessum ipsius mulieris hereditatem illam omnibus diebus vite sue tenebit, siue infans ille mortuus fuerit, siue non, et hoc secundum consuetudinem Anglie. Item si quis filiam habuerit heredem . . . . . .

vii. 5. . . . . racionabilem divisum facere secundum quosdam sub hac forma, precipue secundum cuiusdam persone consuetudinem, ut hii qui socagium tenent et villani, primo dominum suum de meliore et principaliore re quam habuerit, recognoscat, deinde ecclesiam suam, postea vero alias personas . . . . . secundum has leges Anglicanas et secundum alias leges, scilicet, Romanas. Mulier etiam sui viri voluntate testamentum facere potest.

vii. 7. [*Rubric*] Antiquum breue. De faciendo stare racionabilem devisum seu legatum alicuius defuncti.

vii. 8. Si quis autem auctoritate huiusmodi breuis predicti et modo moderno tempore vetiti [1] in curia Regis aliquid contra testamentum proposuit, scilicet quod testamentum ipsum non fuerit recte factum, vel quod res petita non fuerit petita ita ut legata . . . . .

vii. 10. . . . veruntamen racione burgagii tantum vel feodi firme non profertur dominus Rex aliis dominis in custodiis, nisi ipsum burgagium vel ipsa feodi firma debeant servicium militare domino Regi.

vii. 12. . . . . infra etatem, id est, infra xv. annos . . . . . maiores, id est, de etate xv. annorum . . . . .

Quia generaliter dici solet quod putagium hereditatem non dimittit. Et istud intelligendum est similiter de putagio matris quia filius heres legitimus est licet non fuerit filius viri sui quem nupcie demonstrent.

vii. 13. Heres autem omnis legitimus est, nullus vero bastardus legitimus est, vel aliquis qui ex legitimo matrimonio natus non est, legitimus esse non potest.

vii. 14. . . . et quoniam cognicio illius cause ad forum ecclesi-

[1] The ecclesiastical courts have won a victory since Glanvill's day.

asticum spectat [*instead of* et quoniam ad curiam meam non spectat agnoscere de bastardis].

vii. 15. A plea of special bastardy may be decided either in the ecclesiastical court or before the justices by an assize of twelve men.

vii. 16. . . . succedere debet quia dominus non succedet racionibus predictis in capitulo de maritagiis. Dicendum est, ut dicunt quidam, quod illa terra remanebit in custodia dominorum capitalium quousque aliquis heres venerit ad ipsam clamandam. Si ipse qui eam dedit similiter bastardus sit et heredem de corpore suo non habeat, dicunt quidam quod dominus ipse si heredem non habuerit succedet et per hoc breue de eschaeta. [A writ of escheat follows.] Si quis autem intestatus decesserit omnia catalla sua domini sui [olim, *interlined*] intelliguntur esse, et tempore moderno domini Regis concessione domini Pape. Si vero plures habuerit dominos . . . . .

vii. 17. Certain of the clauses as to the lord's right to hold the tenement when there is doubt between two heirs seem to be stigmatized as Lex Antiqua. Thus . . . . . ad libitum suum. Lex Antiqua. Preterea si mulier aliqua . . . . .

Sciendum quod si quis conuictus fuerit de felonia et uxorem habuerit, ipsa uxor nunquam dotem habebit de terra que fuit viri sui de felonia conuicti.[1]

viii. 1. The indenture of fine is more fully described. There are three parts and the king keeps one of them.

viii. 2. The precedent is that of a fine levied at Westminster on the Vigil of S. Andrew in the 13th year of King Henry.

viii. 3. Et sciendum quod nulla terra potest incyrographari nisi data fuerit in perpetuum vel ad terminum vite alicuius.

viii. 9. Sciendum tamen quod nulla curia recordum habet generaliter preter curiam domini Regis. [Extra] Sciendum quod tres sunt homines in Anglia qui recordum habent, videlicet, justiciarii, coronatores, viredarii, non alii. In aliis autem curiis . . . . .

ix. 1. Et sciendum quod quando fit homagium domino, dominus capiet manus hominis sui similiter clausas sub capa sua vel sub alio panno, et homagio facto inuicem se osculabuntur.

Item quero utrum dominus possit distringere hominem suum veniendi in curiam suam sine precepto domini Regis ad respondendum de seruicio unde dominus suus conqueritur quod ei deforciat

[1] A very doubtful point in the thirteenth century.

vel quod aliquid de seruicio suo ei retro sit. Equidem secundum quosdam antiquos bene poterit id facere. Secundum alios modernos non poterit quod ad aliquem effectum veniat, quia homo ille non respondebit de alio [*corr.* libero] tenemento suo nec de hoc quod tangitur [*corr.* tangit] liberum tenementum suum sine precepto domini Regis, quia forte incontinenti tale ostendat breue. [A writ Precipimus tibi quod non implacites A. de libero tenemento suo] Et ita poterit inter dominum et hominem . . . . .

ix. 2. . . . . pro solo vero dominio [*not* domino] [1] . . . .

ix. 11. . . . . Ille autem purpresture que super dominum Regem in regia via probate fuerint per xij. patrie, licet in alio casu aliter fuerit iudicatum, nichilominus in misericordia domini Regis remanebunt hii qui purpresturas illas fecerint . . . . .

. . . . de suo honorabili tenemento [*not* contenemento] . . . .

. . . . et non infra assisam fuerit, hoc est si assisam dominus inde perquirere non poterit, tunc distringetur ut veniat ex beneficio et granto domini Regis in curiam domini sui ad id recitaturum [*corr.* adreciaturum], scilicet, de adresser.[2] Ita dico . . . .

ix. 13. . . . tempore H. Reg. tercii aui nostri Reg. H. filii Johannis Regis et per hoc sequens breue. Et sciendum quod istud breue in curia domini Regis non potest haberi nisi ipse diuise fuerint inter duas villas precipue, vel inter duo feoda et quod feoda illa diuersificarentur nomine, verbi gracia, La Scherde, Billingeham. Et preterea dicunt quod ad istud sequens breue adaptari poterunt duellum et magna assisa.

ix. 14. At the end follows a writ directing a perambulation of boundaries.

x. 1. . . . . cum quis itaque de debito quod sibi debetur curie domini Regis conquiritur, si placitum ipsum ad curiam domini Regis, scilicet, ad comitatum, trahere possit et voluerit, quia illud placitare poterit in curiis dominorum suorum, tunc tale breue de prima summonicione habebit . . . .

The writ is not a Precipe but a Justicies to the sheriff. Instead of a sum of money a charter may be demanded: Eodem modo de catall [is], set catallum non oportet poni in breui nec debet, set eius precium quia diuersa catalla petuntur aliquando et non particule debiti separate, set coniunctim poni non possunt, set narrande sunt omnes particule debiti sicut debentur in placito quando breue inde placitatur, sic, Monstrat D. quod B. iniuste ei detinet unum

[1] A better reading. The writer takes to his French.

quarterium frumenti de precio trium solidorum, et unam loricam de precio dimidie marce etc. Et sciendum quod si precium catallorum xxx. marcas in breui excesserit, debet petens dare terciam partem domino Regi per [*corr.* pro] hoc supradictum breue habendo quia breue illud tunc non est de cursu.[1]

The case may then be removed from the county court by Pone.

Si autem quis per consilium et auxilium curie domini Regis tale sequens breue de debitis habendis perquirere poterit ut opus suum cicius et melius expediatur, tunc habeat tale breue. Then follows a Precipe for 40 shillings, quos ei debet et unde queritur quod ipse ei iniuste detinet.

x. 5. . . . . ex sequentibus liquebit. Si vero principalis vel capitalis debitor habeat unde reddere debitum illud et nolit cum possit, plegii eius respondeant pro debito, et si voluerint habeant terras et redditus debitoris quousque eis satisfactum fuerit de debito quod ante pro eo soluerunt, nisi capitalis debitor monstrauerit se inde esse quietum versus eosdem plegios. Et si ipse debitor paratus sit de debito illo satisfacere, plegii ipsius debitoris non distringantur quamdiu ipse capitalis debitor sufficiat ad solucionem debiti, nec terra vero nec redditus alicuius seisietur pro debito aliquo quamdiu catalla debitoris presencia sufficiunt ad debitum reddendum. Then follows a writ of Justicies to compel the principal debtor to acquit his sureties. This writ may be removed from the county court to the Bench. Some say that it will not be granted for a sum of more than 40 shillings except as a favor. Soluto eo quod debetur ab ipsis plegiis . . . .

Dicunt autem quidam quod creditor ipse suo et legitimorum testium iuramento poterit hoc debitum de iure probare versus ipsum plegium, nisi plegium ipsum curia ipsa velit ad sacramentum leuare,[2] quod pocius accidit, olim autem ante legem vadiatam in tali casu ad duellium perueniebatur. [c. 6] Inuadiatur autem res . . . .

x. 6. . . . . Si autem in custodia sua deterius fuerit factum infra terminum per talliam [*instead of* per culpam[3]] ipsius creditoris computabitur ei in debitum ad valenciam deterioracionis . . . .

x. 11. . . . . precium mihi restituendum. Omit the rest of c. 11.

x. 15. . . . . si certum vocauerit warantum in curia quem dicat se velle habere ad warantum, tunc dies ei ponendus est in curia, illo

[1] See Harvard Law Review, iii. 112.

[2] I doubt our author understood what Granvill meant by "a sacramento leuare."

[3] This variant from the received text looks like a mere blunder.

tamen emptore retento in prisona, quia hii homines qui rettati sunt solum de latrocinio per inditamenta et si imprisonati fuerint per legem Anglie, nulla eis facta [*corr.* facienda] est replegiacio, nec etiam de eis qui rettati sunt de morte hominis si imprisonati fuerint, sine speciali precepto domini Regis. Si vero ad diem illum . . . . . nisi warantus ille alium warantum vocauerit et cum venerit ad quartum warantum erit standum.[1]

x. 17. Passage marked Extra — Item si quis captus fuerit cum aliqua re furata ipse qui furtum illud fecit non potest defendere se per duellium, ita quod dicat quod illam non furatus fuit, set si dicat quod res sua propria est bene potest ut dicunt quidam. Item si quis captus fuerit pro morte hominis, non potest iudicari de iure nisi voluerit se super veredictum visnetorum ponere, et si hoc voluerit [*sic*] seruabit prisonem. Si vero incertum vocauerit quis ad warantum . . . .

x. 18. . . . . sed quid si conductor censum suum statuto termino non soluerit, nunquid in hoc casu licet locatori ipsum conductorem sua auctoritate expellere a re locata? Responsio, licet, si talis inter eos fuerit facta conuencio. [Here ends this book.]

xi. 3. . . . . extraneus extraneum uxor quoque marito. Here begins a new "treatise," De placitis que per recogniciones terminantur. It almost at once becomes a mere series of writs. The following notes may give a fair idea of its contents.

1. Novel disseisin; Limitation post primam transfretacionem nostram in Britanniam. Variations and notes.

Et sciendum est quod qui in seisina bona et placabili fuerit per unum diem, scilicet, ab aurora diei usque ad crepusculum, vel qui in seisina fuerit ut dictum est per unum diem et unam noctem, et inde eiectus fuerit, poterit recuperare per breue noue disseisine sine dubio . . . . . Differentia est inter feodum et tenementum; feodum est quod hereditabiliter tenetur; tenementum quod ad terminum vite tenetur. . . . . Dicitur autem tenementum, terra, mesuagium, redditus, molendinum, morra, marleria et alia consimilia.

2. Mort d'Ancestor; Limitation, last return of John from Ireland. Variations and notes.

3. Utrum. Note. Preterea sciendum est quod predicta communia placita ut recognicio de noua disseisina et de morte antecessoris non sequuntur coram iusticiariis domini Regis nec coram domino Rege, nec ad bancum, set in aliquo certo loco teneantur et capi-

[1] There is reason to believe that this is the true reading.

antur ut in suis comitatibus.[1] Assise autem de ultima presentacione semper capiantur coram iusticiariis de banco et ibi terminentur.

4. Last presentation.

5. Attaint. Et sciendum quod istud predictum breue nunquam a domino Rege vel eius iusticiariis alicui conceditur sine dono, nisi de gracia, si sit pauper; et si petens conuictus fuerit, ibit ad prisonam, si vero lucratus fuerit, primi xij. iuratores imprisonantur donec ibi finem fecerint.

6. Redisseisin.

7. Disseisin; a special case.

8. Writs of right — addressed to the guardian of the heir of Baldwin, Earl of Devon, also to the bailiff of Abbot of Lyra.

Et si mesuagium petatur in aliquo burgagio tunc addatur hec clausula nisi redditus et edificium valeant per annum plus quam xl. solidos, quos clamat tenere de te in liberum burgagium.

Et notandum quod seruicium quod est in denariis non debet extendere [*corr.* excedere] xl. solidos et seruicium militare non debet esse minus quam medietas feodi unius militis, quia si fuerit seruicium minus quam medietas feodi unius militis vel supra pro vero tunc non est breue de cursu.[2]

9. Recordari facias. De falso iudicio.

10. Customs and services.

11. Mesne.

12. Account against bailiff or steward.

13. Quod permittat for easements and profits.

14. Entry. Many forms, including the *cui in vita.* The wife can be barred by her fine; si vero mulier ipsa coram iusticiariis de banco vel itinerantibus penitus virum suum contradixerit, cirographum de maritagio vel hereditate illa nunquam leuetur.

15. Warantia carte.

16. Protecting infants against litigation.

17. Covenant.

18. Escheat.

19. Ward.

20. Breue de occasione. This is Quare eiecit infra terminum.

21. Appointment of attorney.

22. Writs to bishops and prohibitions to Court Christian. Writs for arrest of excommunicates.

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[1] Apparently a false interpretation of a famous clause in the Great Charter.

[2] Compare Harvard Law Review, iii. 110. The writer seems to have turned the rule inside out.

23. Replevin. De homine replegiando.

24. De rationabili parte.

25. Cosinage.

26. Dower ex assensu patris, etc.

27. Admeasurement of dower.

28. Admeasurement of pasture. Et sciendum quod homo non debet impetrare breue de admensuracione pasture super dominum suum.

29. Appeals of felony.

30. Trespass. Assault. Assault on plaintiff's wife.

31. Trespass by breach of pigeon house, by fishing in plaintiff's fishery, by breach of park and taking wild animals. Notandum quod qui conuictus fuerit per istam proximo dictam inquisicionem, non perdet vitam nec membra, eo quod columbe non sunt penitus domestice, nec pisces, nec etiam bestie, sicut boues, equi, vacce et huiusmodi talia.

32. Writ directing that *A* shall have the king's peace, and that *B* do find pledges to keep the peace.

33. Trespass.

34. Replevin.

35. Writ of right. How the lord's court is to be falsified — Taliter autem probetur ipsa defalta, et sic abiuret curiam domini capitalis. Veniet ipse petens cum balliuo ipsius hundredi ad curiam dicti domini capitalis, et feret breue suum in manu sua et unum librum si voluerit, et stet super limitem illius curie et iuret super librum quod amplius per illud breue quod tenet in manu sua in curia illa non placitabit et quia illa curia ei defecit de recto, et tunc habebit breue balliuorum ad vicecomitem quod curiam illam abiur[auit] et defaltam probauit.

36. Odium et atia.

37. Quo iure.

38. Escheat.

39. Pone in replevin: Baldwin de L'Isle and William de L'Isle concerned.

40. Geoffrey parson of Serewelle [Shorwell, Isle of Wight], is in trouble for having procured the excommunication of Jordan of Kingeston who had brought a writ of prohibition against him. The writ is tested by R. de Turkebi.[1]

[1] Roger Thurkelby, justice of the Bench in the middle part of Henry III.'s reign. He died in 1260.

41. Writ after judgment in a novel disseisin.

42. Revocation of writ ordering capture of an excommunicate.

43. Quod permittat habere pasturam for Walter Tho' the rector of the church of Arreton [Isle of Wight] against the Abbot of Quarr.[1]

44. Trespass.

45. Novel disseisin.

46. Entry.

47. Aiel.

48. Casus Regis. P. habet duos filios, D. primogenitus est et A. postnatus. D. habet filium B. heredem et D. decedit, et P. decedit et capitalis dominus ponit in seisinam A. postnatum, et B. filius D. perquiret predictum breue de auo.[2]

49. Waste.

50. Habere facias seisinam.

51. Trespass and imprisonment.

52. Contra forma feoffamenti. Henry of Clakeston and Alice his wife against William de Lacy. Recital — cum consilio fidelium nostrorum provideri fecerimus et statui necnon per totum regnum nostrum publicari ne qui occasione tenementorum suorum distringantur ad sectam faciendam ad curiam dominorum suorum nisi per formam feofamenti sui ad sectam illam teneantur, vel ipsi aut eorum antecessores tenementa illa tenentes eam facere consueuerunt ante primam transfretacionem nostram in Britanniam etc.[3] The king is H. dei gracia Rex Anglie, Dominus Hibernie et Dux Aquitanie.

Explicit summa que vocatur Glaunvile. This apparently by the same hand but in different ink. Then immediately a writ issued by H. King of England, Duke of Normandy etc. to B. de Insula. Then a count in an imaginary writ of right from the time of Henry III. Then the form of prohibition known as Indicavit issued by Henry when no longer Duke of Normandy concerning John vicar of Sorewelle, Jordan of Kingeston and William de L'Isle. Nota quod nullum tenementum potest incirographari in curia domini Regis alicui infra etatem existenti.

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[1] In 1266 Walter Tholomei, rector of Arreton, executed a deed of exchange with the Abbot of Quarr, Hasley's Isle of Wight, App. p. cxxxvi.

[2] This is the case of King John and Arthur; P = Henry II.; D = Geoffrey; B = Arthur; A = John. See Bracton, f. 267 b, 282, 327 b, where the casus Regis is discussed.

[3] See Provisions of Westminster (1259), c. 1.

Item sciendum quod si quis perdiderit loquelam per paralisim et impotens sui fuerit, dominus Rex ponet custodem ad ipsum custodiendum et bona sua et dominus Rex nichil inde capiet. Et tribus de causis erit in custodia domini Regis, quia non debet esse in tuicione domini capitalis, quia dominus capitalis posset forte aliquid alienare de tenemento suo ad exheredacionem heredis. Item non debet esse in custodia heredis quia forte heres mallet ipsum esse pocius mortuum quam viuum. Item non debet esse in tuicione uxoris sue licet uxorem habeat, set in tuicione domini Regis, quia si esset, tunc optineret uxor dominium tocius ipsius tenementi, set per custodem domini Regis ut domina habebit racionabile estouerium suum. Et ita se habet lex Anglie siue tenuerit de domino Rege, siue non. Et si ipse implacitatus fuerit, ipse respondet pro eo qui positus fuerit ex parte domini Regis.[1]

Si quis uxorem suam occiderit et conuictus inde fuerit, omnia bona ipsius conuicti erunt domini Regis, tamen per legem Anglie ipsa mulier que occisa fuerit partem suam catallorum mobilium habebit.[2]

A page and a half of blank parchment. Then Capitula Itineris of 40 Henry III. Then other capitula as pleaded by Roger de Turkebi. The Assize of Bread and Beer. The correspondence between the King and the Barons before the battle of Lewes. Account of the battle of Lewes. Statement that the following page was written by the hand of Robert Carpenter of Hareslade at Whitsuntide 1265. Precedent for a will. A few legal notes in French. End of a quire.

In another part of the MS. (f. 87) there is a curious form of prayer apparently intended for the use of litigants . . . . . "sic me presens iudicium fac peragere, ut in tempore probacionis victor valeam apparere per Te, Saluator Mundi, qui viuis et regnas Deus per omnia secula seculorum. Amen. Pater noster, usque ad finem ter in honore Patris et Filii et Spiritus Sancti, et similiter eodem modo ter Pater noster in honore Raphaelis Archangeli, et similiter eodem modo ter Pater noster in honore Sancti Ezechielis Prophete, ut in placito tuo victor valeas existere, cum Aue Maria similiter dicta."

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[1] This is an important note. The king's right to act as guardian of idiots and lunatics can, I believe, be traced to the last years of Henry III. and no further. See English Historical Review, vi. 369.

[2] This curious note tends to show that at this time our law of husband and wife still entertained some notion of a community of goods. A man murders his wife and is hanged; the wife's share of movables is not forfeited, but goes to her kinsfolk.